IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 130 of 2001

Date of Decision: 24.12.2007

State of H.P … Appellant

Versus

Pawan Kumar …. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant: Mr. V. K. Verma, Additional Advocate General.

For the respondent: Mr. Raj Negi, Advocate, vice Mr. T. S. Chauhan, Advocate.

Surinder Singh, J (oral) .

The respondent was acquitted of the charges, by the learned trial court framed against him under section 279, 337, 304-A and 201 of the Indian Penal Code and also under sections 132,133, 134 and 187 of the Motor Vehicles Act, which has been assailed by the State in this appeal.

I have heard the learned counsel for the parties and gone through the record.

Precisely, the case of the prosecution has been that on 16.3.1998, Chaman Lal Complainant was the pillion rider with the deceased Rup Lal on Scooter No. PB.04A-8085. At about 5.30 p.m. when

[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

his scooter reached near ***Sarad Nallah***, a white colored Jeep came from the opposite side, which was being allegedly driven rashly and negligently by the respondent and it hit the scooterist and fled away from the spot. The complainant as well as the pillion rider fell off the Scooter, on road and sustained grievous injuries. A teacher named Santosh and another person Shera who was a contractor, came to the spot. They took both the injured to A.C.C.Hospital for their treatment. Rup Lal was serious, he was referred to PGI at Chandigarh where he died on the next day. Chaman Lal was unable to read the number of the Jeep. Sher Singh had telephonically informed the police about the accident, rapat Ex.PW7/A was recorded in the police station at about 6 p.m.

Police visited the spot and recorded the statement Ex.PW4/A of Chaman Lal, under section 154 of the Code of Criminal Procedure. After registration of the case, further investigation started. Site plan of the accident was prepared and white coloured jeep No.HP-02-3847, owned by the respondent, was taken into possession on 20.3.1998 from Bilaspur. Since Rup Lal had succumbed to his injuries in the PGI Chandigarh on 20.3.1998, the case was converted into Section 304-A Indian Penal Code. Both the vehicles were got mechanically

examined by PW7. After recording statement of the witnesses and taking into possession the MLc's and post mortem report of the deceased, the case was presented in the court for trial.

To prove the charges, prosecution examined its witnesses. Respondent was also examined under section 313 Cr.P.C. He had denied the accident in question. In other words his case was of denial simpliciter. The respondent did not lead any defence evidence. At the end of the trial, the respondent was acquitted and his acquittal has been assailed in this appeal, on the ground that the learned trial court did not appreciate the evidence on record in its right perspective.

I have reappraised the evidence adduced on record.

One Sher Singh had reported about the accident at 6 p.m. on 16.3.1998, he was not examined. In the rapat roj namcha Ex.PW7/A, neither the name of the respondent nor number of the jeep were mentioned. In the first version given by injured Chaman Lal under section 154 Cr.P.C (Ex.PW4/A) on 16.3.1998 there is only a reference of the colour of the Jeep. It was clarified by him that due to sudden incident he could not go through the number of the jeep.

The complainant was examined in the court as PW4, in his examination-in-chief he has given the jeep number and has identified the respondent as the driver of the jeep at the relevant time but in the cross-examination he has admitted that when he had made the earliest version to the police he did not know the number of the jeep and even identification of the driver, but he was informed by some one later. Thus the witness had left case in lurch as to who was that "someone". PW2 Rajinder Kumar a Shopkeeper, is alleged to have seen the accident. According to him the site of accident was not visible from his shop but he was standing outside his shop on the road with one Dharampal when this accident took place. In the cross-examination he has stated that he was informed by the truck-drivers about the accident in question and many people had gathered there and therefore, he did not know as he was not present on the spot. Thus, his statement also does not inspire confidence.

Thus there is no other witness except one the mechanic who had examined both the vehicles to connect the respondent with the crime. According to him (PW7), there was a dent on the right side of the bumper of the jeep in question. Head Constable Shamsher Singh (PW9) Investigating Officer also did

not reveal as to how he came to know that the said vehicle was involved in the accident and that the respondent was driving the vehicle at the relevant time, which caused the accident.

In view of the above, I do not find that the learned trial court has erred in holding that the prosecution has failed to establish on record that the respondent was responsible for causing the death of Rup Lal and injuries to the complainant Chaman Lal in the accident, and thereafter fled away from the spot. Therefore, the appeal is dismissed.

December 24,2007 (Surinder Singh),J.
(D)